

AMENDMENT TO H.R. 4
OFFERED BY MR. NADLER

Page 3, line 6, strike “or (e)” and insert “or (f)”.

Page 3, line 15, insert after “To prevail” the following: “in demonstrating that a representational, districting, or apportionment scheme results in vote dilution”.

Page 3, line 22, strike “generally politically aligned” and insert “politically cohesive”.

Page 3, line 24, insert after “protected class” the following: “usually”.

Page 4, line 9, strike “The extent the history” and inserting “The extent of any history”.

Page 4, line 11, insert before the period at the end the following: “that affected the right of members of the protected class to register, to vote, or otherwise to participate in the political process”.

Page 4, beginning on line 20, strike “prohibitions against bullet-voting, and majority vote requirements” and insert “majority vote requirements, anti-single shot provisions, or other qualifications, prerequisites, stand-

ards, practices, or procedures that may enhance the opportunity for discrimination against the members of the protected class”.

Page 5, beginning on line 3, strike “in such areas as education, employment, and health” and insert “, both public or private, in such areas as education, employment, health, housing, and transportation”.

Page 5, line 20, insert after “the particularized needs of the members of the protected class” the following: “, including a lack of concern for or responsiveness to the requests and proposals of the members of the protected class, except that compliance with a court order may not be considered evidence of responsiveness on the part of the jurisdiction”.

Page 5, line 24, insert after “practice or procedure is tenuous.” the following:

1 “In making this determination, a court shall con-
2 sider whether the qualification, prerequisite, stand-
3 ard, practice, or procedure in question was designed
4 to advance and materially advances a valid and sub-
5 stantiated State interest.”.

Page 6, strike line 8 and all that follows through line 15, and insert the following:

1 “(c)(1) A violation of subsection (a) resulting in vote
2 denial or abridgment is established if the challenged quali-
3 fication, prerequisite, standard, practice, or procedure—

4 “(A) results or will result in members of a pro-
5 tected class facing greater costs or burdens in par-
6 ticipating in the political process than other voters;
7 and”.

Page 6, line 16 , strike “difficulty is” and insert
“costs or burdens are”.

Page 6, insert after line 20 the following:

8 “In determining the existence of a burden for pur-
9 poses of subparagraph (A), the absolute number or
10 the percent of voters affected or the presence of vot-
11 ers who are not members of a protected class in the
12 affected area shall not be dispositive, and the af-
13 fected area may be smaller than the jurisdiction to
14 which the qualification, prerequisite, standard, prac-
15 tice, or procedure applies.”.

Page 6, line 23, strike “burden” and insert “result”.

Page 6, line 24, strike “a pre-existing burden” and
insert “pre-existing burdens or costs”.

Page 7, line 5, insert “extent of any” before “his-
tory”.

Page 7, line 6, insert before the period at the end the following: “that affected the right of members of the protected class to register, to vote, or otherwise to participate in the political process”.

Page 7, line 15, strike “may”.

Page 7, beginning on line 19, strike “in areas such as education, employment, and health,” and insert “, both public or private, in areas such as education, employment, health, housing, and transportation,”.

Page 8, line 8, insert “, including a lack of concern for or responsiveness to the requests and proposals of the group, except that compliance with a court order may not be considered evidence of responsiveness on the part of the jurisdiction” before the period at the end.

Page 8, line 12, insert “In making a determination under this clause, a court shall consider whether the qualification, prerequisite, standard, practice, or procedure in question was designed to advance and materially advances a valid and substantiated State interest.” after the period at the end.

Page 9, strike lines 1 through 4 and redesignate succeeding subparagraphs accordingly.

Page 9, line 21, strike “ A prophylactic” and all that follows through line 24, and insert the following: “Unsubstantiated defenses that the qualification, prerequisite, standard, practice, or procedure is necessary to address criminal activity.”.

Page 10, strike lines 1 through 2.

Page 11, line 6, insert after “subsection (b) or (c).” the following:

1 “(e) For purposes of this section, the term ‘affected
2 area’ means any geographic area, in which members of
3 a protected class are affected by a qualification, pre-
4 requisite, standard, practice, or procedure allegedly in vio-
5 lation of this section, within a State (including any Indian
6 lands).”.

Page 11, strike line 7 and all that follows through line 20, and insert the following:

7 **SEC. 3. RETROGRESSION.**

8 Section 2 of the Voting Rights Act of 1965 (52
9 U.S.C. 10301 et seq.), as amended by section 2 of this
10 Act, is further amended by adding at the end the fol-
11 lowing:

12 “(f) A violation of subsection (a) is established when
13 a State or political subdivision enacts or seeks to admin-
14 ister any qualification or prerequisite to voting or stand-

1 ard, practice, or procedure with respect to voting in any
2 election that has the purpose of or will have the effect
3 of diminishing the ability of any citizens of the United
4 States on account of race or color, or in contravention of
5 the guarantees set forth in section 4(f)(2), to participate
6 in the electoral process or elect their preferred candidates
7 of choice. This subsection applies to any action taken on
8 or after January 1, 2021, by a State or political subdivi-
9 sion to enact or seek to administer any such qualification
10 or prerequisite to voting or standard, practice or proce-
11 dure.

12 “(g) Notwithstanding the provisions of subsection (f),
13 final decisions of the United States District Court of the
14 District of Columbia on applications or petitions by States
15 or political subdivisions for preclearance under section 5
16 of any changes in voting prerequisites, standards, prac-
17 tices, or procedures, supersede the provisions of subsection
18 (f).”.

Page 15, line 24, insert “serious” before “question”.

Page 18, line 17, insert after “State” the following:

“or subdivision”.

Page 22, insert after line 13 the following:

19 (c) ADMINISTRATIVE BAILOUT.—

1 (1) IN GENERAL.—Section 4 of the Voting
2 Rights Act of 1965 (52 U.S.C. 10303) is amended
3 by adding at the end the following:

4 “(g) ADMINISTRATIVE BAILOUT.—

5 “(1) DETERMINATION OF ELIGIBILITY.—

6 “(A) IN GENERAL.—After making a deter-
7 mination under subsection (b)(1)(A) that the
8 provisions of subsection (a) apply with respect
9 to a State and all political subdivisions within
10 the State, the Attorney General shall determine
11 if any political subdivision of the State is eligi-
12 ble for an exemption under this subsection, and
13 shall publish, in the Federal Register, a list of
14 all such political subdivisions. Any political sub-
15 division included on such list is not subject to
16 any requirement under section 5 until the date
17 on which any application under this section has
18 been finally disposed of or no such application
19 may be made.

20 “(B) RULE OF CONSTRUCTION.—Nothing
21 in this subsection may be construed to pro-
22 vide—

23 “(i) that the determinations made
24 pursuant to the creation of the list shall
25 have any binding or preclusive effect; or

1 “(ii) that inclusion on the list—

2 “(I) constitutes a final deter-
3 mination by the Attorney General that
4 the listee is eligible for an exemption
5 pursuant to this subsection or that, in
6 the case of the listee, the provisions of
7 subparagraphs (A) through (F) of
8 subsection (a)(1) are satisfied; or

9 “(II) entitles the listee to any ex-
10 emption pursuant to this subsection.

11 “(2) ELIGIBILITY.—A political subdivision that
12 submits an application under paragraph (3) shall be
13 eligible for an exemption under this subsection only
14 if, during the ten years preceding the filing of the
15 application, and during the pendency of such appli-
16 cation—

17 “(A) no test or device referred to in sub-
18 section (a)(1) has been used within such polit-
19 ical subdivision for the purpose or with the ef-
20 fect of denying or abridging the right to vote on
21 account of race or color or in contravention of
22 the guarantees of subsection (f)(2);

23 “(B) no final judgment of any court of the
24 United States, other than the denial of declara-
25 tory judgment under this section, has deter-

1 mined that denials or abridgements of the right
2 to vote on account of race or color have oc-
3 curred anywhere in the territory of such polit-
4 ical subdivision or that denials or abridgements
5 of the right to vote in contravention of the
6 guarantees of subsection (f)(2) have occurred
7 anywhere in the territory of such subdivision
8 and no consent decree, settlement, or agreement
9 has been entered into resulting in any abandon-
10 ment of a voting practice challenged on such
11 grounds; and no declaratory judgment under
12 this section shall be entered during the pend-
13 ency of an action commenced before the filing
14 of an action under this section and alleging
15 such denials or abridgements of the right to
16 vote;

17 “(C) no Federal examiners or observers
18 under this Act have been assigned to such polit-
19 ical subdivision;

20 “(D) such political subdivision and all gov-
21 ernmental units within its territory have com-
22 plied with section 5 of this Act, including com-
23 pliance with the requirement that no change
24 covered by section 5 has been enforced without
25 preclearance under section 5, and have repealed

1 all changes covered by section 5 to which the
2 Attorney General has successfully objected or as
3 to which the United States District Court for
4 the District of Columbia has denied a declara-
5 tory judgment;

6 “(E) the Attorney General has not inter-
7 posed any objection (that has not been over-
8 turned by a final judgment of a court) and no
9 declaratory judgment has been denied under
10 section 5, with respect to any submission by or
11 on behalf of the plaintiff or any governmental
12 unit within its territory under section 5, and no
13 such submissions or declaratory judgment ac-
14 tions are pending; and

15 “(F) such political subdivision and all gov-
16 ernmental units within its territory—

17 “(i) have eliminated voting procedures
18 and methods of election which inhibit or
19 dilute equal access to the electoral process;

20 “(ii) have engaged in constructive ef-
21 forts to eliminate intimidation and harass-
22 ment of persons exercising rights protected
23 under this Act; and

24 “(iii) have engaged in other construc-
25 tive efforts, such as expanded opportunity

1 for convenient registration and voting for
2 every person of voting age and the appoint-
3 ment of minority persons as election offi-
4 cials throughout the jurisdiction and at all
5 stages of the election and registration
6 process.

7 “(3) APPLICATION PERIOD.—Not later than 90
8 days after the publication of the list under para-
9 graph (1), a political subdivision included on such
10 list may submit an application, containing such in-
11 formation as the Attorney General may require, for
12 an exemption under this subsection. The Attorney
13 General shall provide notice in the Federal Register
14 of such application.

15 “(4) COMMENT PERIOD.—During the 90-day
16 period beginning on the date that notice is published
17 under paragraph (3), the Attorney General shall give
18 interested persons an opportunity to submit objec-
19 tions to the issuance of an exemption under this
20 subsection to a political subdivision on the basis that
21 the political subdivision is not eligible under para-
22 graph (2) to the Attorney General. During the 1
23 year period beginning on the effective date of this
24 subsection, such 90-day period shall be extended by
25 an additional 30 days. The Attorney General shall

1 notify the political subdivision of each objection sub-
2 mitted and afford the political subdivision an oppor-
3 tunity to respond.

4 “(5) DETERMINATION AS TO OBJECTIONS.—In
5 the case of a political subdivision with respect to
6 which an objection has been submitted under para-
7 graph (4), the following shall apply:

8 “(A) CONSIDERATION OF OBJECTIONS.—
9 The Attorney General shall consider and re-
10 spond to each such objection (and any response
11 of the political subdivision thereto) during the
12 60 day period beginning on the day after the
13 comment period under paragraph (4) concludes.

14 “(B) JUSTIFIED OBJECTIONS.—If the At-
15 torney General determines that any such objec-
16 tion is justified, the Attorney General shall pub-
17 lish notice in the Federal Register denying the
18 application for an exemption under this sub-
19 section.

20 “(C) UNJUSTIFIED OBJECTIONS.—If the
21 Attorney General determines that no objection
22 submitted is justified, each person that sub-
23 mitted such an objection may, not later than 90
24 days after the end of the period established
25 under subparagraph (A), file, in the District

1 Court of the District of Columbia, an action for
2 judicial review of such determination in accord-
3 ance with chapter 7 of title 5, United States
4 Code.

5 “(6) EXEMPTION.—The Attorney General may
6 issue an exemption, by publication in the Federal
7 Register, from the application of the provisions of
8 subsection (a) with respect to a political subdivision
9 that—

10 “(A) is eligible under paragraph (2); and

11 “(B) with respect to which no objection
12 under was submitted under paragraph (4) or
13 determined to be justified under paragraph (5).

14 “(7) JUDICIAL REVIEW.—Except as otherwise
15 explicitly provided in this subsection, no determina-
16 tion under this subsection shall be subject to review
17 by any court, and all determinations under this sub-
18 section are committed to the discretion of the Attor-
19 ney General.

20 “(8) SAVINGS CLAUSE.—If a political subdivi-
21 sion was not subject to the application of the provi-
22 sions of subsection (a) by reason of a declaratory
23 judgment entered prior to the effective date of this
24 subsection, and such political subdivision has not
25 violated any eligibility requirement set forth in para-

1 graph (2) at any time thereafter, then that political
2 subdivision shall not be subject to the requirements
3 of subsection (a).”.

4 (2) CONFORMING AMENDMENT.—

5 (A) IN GENERAL.—Section 4(a)(1) of the
6 Voting Rights Act of 1965 (52 U.S.C.
7 10303(a)(1)), as amended by this Act, is fur-
8 ther amended by inserting after “the United
9 States District Court for the District of Colum-
10 bia issues a declaratory judgment under this
11 section” the following: “, or, in the case of a
12 political subdivision, the Attorney General
13 issues an exemption under subsection (g)”.

14 (B) EXPIRATION OF TIME LIMIT.—On the
15 date that is 1 year after the effective date of
16 this subsection, section 4(g)(3) of the Voting
17 Rights Act of 1965 (52 U.S.C. 10303(g)(3)) is
18 amended by striking “During the 1 year period
19 beginning on the effective date of this sub-
20 section, such 90-day period shall be extended by
21 an additional 30 days.”. For purposes of any
22 periods under such section commenced as of
23 such date, the 90-day period shall remain ex-
24 tended by an additional 30 days.

Page 47, line 13, insert “serious” before “question”.

